SUPREME COURT, U. S.

AUG 6 1966

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 57

PUROLATOR PRODUCTS, INC.,
Petitioner,

v.

FEDERAL TRADE COMMISSION,
Respondent.

REPLY BRIEF FOR PUROLATOR PRODUCTS, INC. ON PETITION FOR A WRIT OF CERTIORARI

SUMNER S. KITTELLE, Esq.,
ALLAN TRUMBULL, Esq.,
Counsel for Petitioner,
1 Chase Manhattan Plaza,
New York, New York 10005.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 61

PUROLATOR PRODUCTS, INC.,

Petitioner,

v.

FEDERAL TRADE COMMISSION,

Respondent.

REPLY BRIEF FOR PUROLATOR PRODUCTS, INC. ON PETITION FOR A WRIT OF CERTIORARI

Petitioner, PUROLATOR PRODUCTS, INC. ("Purolator") joins the Solicitor General in urging the Court to review the issues described in his Amicus Curiae Memorandum.* However, Purolator wishes to comment on one portion of the Federal Trade Commission's Brief in Opposition.

Question 6 of the questions presented in the Petition is, in substance, whether Purolator under § 2(a) may cost justify the price difference between its WDs and so-called "indirect" jobber purchasers from such WDs on the basis of the cost Purolator incurred in paying its WDs for acting as Purolator's agents in distributing filters to such "indirect" jobber purchasers.

On page 21 of the Brief of the Federal Trade Commission in Opposition, Commission Counsel claim that Purolator in this Court has deviated from the argument it made

* In so doing, however, Purolator does not abandon its position that the Court should review all of the issues stated in the Petition for Certiorari, including that set forth in petitioner's Motion for Leave to Amend the Petition.

below, in that it now contends that warehouse distributors are its "agents" in reselling filters to jobbers, and that the 6¢ internal redistribution discount to such warehouse distributors is in fact a "commission" paid to its "agents". We fail to perceive any deviation from the argument made below. (See, for example, Petitioner's Reply Brief in the Court of Appeals, p. 6.) It was the Commission which, in its "majority" opinion, characterized the warehouse distributor as an "agent". The Commission's precise language is quoted on page 21 of Purolator's Petition.

The position of Commission Counsel appears to be that for purposes of invoking the indirect purchaser theory, warehouse distributors are agents of Purolator but that for purposes of rejecting Purolator's cost justification defense, warehouse distributors are not agents at all but purchasers of Purolator.

Purolator respectfully submits that this Court should grant certiorari on this issue, if only so the bench, bar and automotive parts industry will know what the law is in this area.

Respectfully submitted,

SUMNER S. KITTELLE

Sumner S. Kittelle, Esq.

ALLAN TRUMBULL

Allan Trumbull, Esq.
Counsel for Petitioner

August 5, 1966